IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 6 of 2003
with
Civil Application No.30 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALPESH RAMESHCHANDRA BHATIA

Versus

DHARMENDRASINGH KISHORSING SISODIA

Appearance:
MR MB PARIKH for the appellant.
Mr.Nagarkar for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/02/2003

ORAL JUDGEMENT

Admit. Mr.Nagarkar appears for the respondent in the Appeal from Order.

With the consent of the parties, the Appeal from Order is taken up for final hearing today.

This Appeal from Orer is filed against the order dated 4.10.2002, by which the the trial Judge has vacated the interim relief granted initially. The said order was passed by the trial court in view of the fact that the Advocate for the plaintiff was not available for the whole day. Even though the matter was called out so many times during the course of the day, the plaintiff did not bother to remain present. On that ground, the application for interim injunction was rejected by the trial court and the aforesaid order is impugned in the Appeal from Order at the instance of the original plaintiff.

The appellant thereafter submitted another application for restoring the original application Exhibit 5 which was dismissed for default. The trial court has rejected that application also on the ground that the said application is not supported by affidavit. Mr.Parikh for the appellant argued that appropriate care will be taken in future by the plaintiff and the plaintiff and his Advocate will remain present at the time of hearing of the application. It is submitted that the plaintiff's Advocate was under the impression that till the written statement is filed by the other side, Exhibit 5 is not likely to be heard and because of the genuine misunderstanding, the Advocate was not present, though junior Advocate was already present at the time when the matter was called out.

On behalf of the respondent, Mr.Nagarkar, learned Advocate, has fairly stated that he has no objection if the order of the trial court is set aside and the original application is restored on the file of the Civil Court. He, however, submitted that the defendant may be given time to file written statement and that such written statement will be submitted by 24th February, 2003. Mr.Parikh, learned Advocate for the appellant, states that the appellant has no objection in case the defendant is permitted to file his written statement accordingly. The said statement is made on the basis of the instructions received by his client, who is present in the Court, and who is identified by Mr.Parikh.

In view of the consensus between the parties, the following order is passed :-

(1) The order of the trial court dated 4.10.2002 is set aside;

(2) Exhibit 5 submitted by the plaintiff in Special Civil Suit No.97 of 2002 is restored to file. Now, Exhibit 5 is to be decided on its own merits by the learned trial Judge;

A n d

(3) The defendant of Special Civil Suit No.97 of 2002 is permitted to file his written statement and such written statement is to be filed on or before 24th February, 2003. This part of the order is passed with the consent of the parties, as indicated above.

Accordingly, even if the right of the defendant for filing written statement is closed, then also, in view of the consensus between the parties, he is permitted to file written statement by the aforesaid date. If any application is submitted by the defendant, the trial court will allow him to file written statement and that application shall stand allowed by this order.

The trial court shall proceed with the hearing of Exhibit 5 at any time after 24th February, 2003, i.e. the last date upto which he is permitted to file written statement. If the written statement is already produced in the Court, the same shall be taken on record.

It is clarified that this court has not expressed any opinion on the merits of Exhibit 5, as the same is to be decided by the learned trial Judge after hearing both the sides.

Advocates who are appearing for both sides in the present proceedings have assured the Court that their counterparts will cooperate in the early disposal of Exhibit 5.

So far as the amount deposited by the appellant is concerned, the respondent is permitted to withdraw the same as costs of this Appeal from Order.

This Appeal from Order is accordingly disposed of.

In view of the disposal of the Appeal from Order, no order in the Civil Application.

Writ to be sent to the trial court forthwith.

7th February, 2003 (P.B. Majmudar, J.)

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(apj)